FILED
AUG 18 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1866

In the Supreme Court of the United States

OCTOBER TERM, 1986

CSEA LOCAL UNION 1000, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, PETITIONER

v.

WILLIAM E. BROCK, SECRETARY OF LABOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether a union member who intervenes in a suit filed by the Secretary of Labor to set aside a union election under Title IV of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 481 *et seq.*, may recover from the union reasonable attorneys' fees incurred in exhausting administrative remedies and assisting the Secretary's enforcement of the statute.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A12) is reported at 784 F.2d 98. The opinion and order of the district court (Pet. App. A13-A16) are unreported. The prior opinion of the court of appeals concerning the validity of the election held by petitioner (Pet. App. A36-A48) is reported at 761 F.2d 870. The prior opinion of the district court concerning the validity of the election (Pet. App. A17-A35) is reported at 594 F. Supp. 188.

JURISDICTION

The judgment of the court of appeals was entered on February 14, 1986. The petition for a writ of certiorari was filed on May 12, 1986. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Congress enacted the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. 401 *et seq.*, which sets forth detailed standards governing the operations of labor organizations, because it found that labor organizations and their officers and representatives had participated in "a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct" (29 U.S.C. 401(b)). Congress viewed union democracy as an important safeguard against abuses by union officials and it therefore established in Title IV of the LMRDA a comprehensive scheme for the regulation of union elections. *Trbovich* v. *United Mine Workers*, 404 U.S. 528, 531-532 (1972); *Wirtz* v. *Local 153, Glass Bottle Blowers Ass'n*, 389 U.S. 463, 470 & n.9 (1968). Title IV prescribes minimum standards governing union elections and provides safeguards designed to guarantee individual union members' rights to participate in those elections. See 29 U.S.C. 481-483.

Congress endowed the Secretary of Labor with exclusive responsibility for enforcing Title IV (see 29 U.S.C. 483). However, in order to prevent unnecessary judicial interference in internal union affairs, the Secretary may not seek to set aside a union elec-

tion unless a union member exhausts the union's internal procedures and files a complaint with the Secretary (29 U.S.C. 482). The grounds upon which the Secretary may challenge the validity of the union election are limited to the claims raised in "some discernible fashion" in the complaint filed by the union member under the union's internal dispute resolution procedure. *Hodgson* v. *Local 6799, United Steelworkers*, 403 U.S. 333, 341 (1971); 29 U.S.C. 482. The union member who filed the complaint with the Secretary may intervene in any Title IV suit subsequently filed by the Secretary "so long as that intervention is limited to the claims of illegality presented by the Secretary's complaint" (*Trbovich* v. *United Mine Workers*, 404 U.S. at 537).

2. Respondent Helen Carter, a member of petitioner Civil Service Employees Association (CSEA), unsuccessfully sought to be nominated for the position of secretary of the union in connection with petitioner's 1982 mail ballot election. Under the nominating procedures in effect at that time, incumbents running for office automatically were placed on the ballot. Nonincumbents were nominated only if (1) they were approved by a nominating committee that applied unwritten subjective criteria, or (2) they submitted a petition bearing the signatures of two percent of the membership (approximately 3,800 signatures) within six weeks after being rejected by the nominating committee. Pet. App. A1, A37-A38.

Carter was not selected by the nominating committee, and she filed a complaint with petitioner asserting that its nominating procedure was arbitrary and discriminatory and therefore violated Title IV of the LMRDA. See 29 U.S.C. 481(e) ("every [union] member in good standing shall be eligible to be a

candidate and to hold office (subject to * * * reasonable qualifications uniformly imposed)"). Carter also protested petitioner's failure to conduct its election by secret ballot. See 29 U.S.C. 481(b) (election must be "by secret ballot among the members in good standing"). Petitioner rejected Carter's protests on the ground that they were not timely filed. With the assistance of counsel, Carter then filed a complaint with the Secretary of Labor urging the Secretary to institute a lawsuit challenging the election under Title IV. Pet. App. A1-A2, A38-A39.

The Secretary's investigation of Carter's complaint was aided by documentation submitted by Carter's counsel demonstrating that petitioner was subject to the LMRDA and that Carter had exhausted the union's internal remedies. The Secretary determined that Carter's allegations were supported by the evidence and that petitioner's violations of the relevant provisions of the LMRDA might have affected the outcome of the election. He therefore filed suit against petitioner in the United States District Court for the Northern District of New York seeking to set aside the election; Carter intervened in the action as a plaintiff. Pet. App. A2.

The district court found that (1) Carter had exhausted her internal union remedies; (2) petitioner had violated Title IV by failing to conduct its election by secret ballot; and (3) petitioner's nominating procedure did not violate Title IV because the signature method for obtaining a nomination served as an alternative to the unlawful nominating committee method of candidate selection. The district court further concluded that a new election was necessary to remedy the secret ballot violation. The new election was held under the Secretary's supervision on October

15, 1984, and Carter appeared on the ballot but was not elected. Pet. App. A3, A17-A34, A39-A40.

The Secretary and petitioner each appealed the district court's adverse rulings, and Carter participated in the proceedings in the court of appeals. The court of appeals affirmed the district court's finding that Carter had exhausted the internal union remedies, but reversed the district court's determination that petitioner's nominating procedures complied with Title IV. The court of appeals held that the nominating procedures were invalid because they were not uniformly applied to all candidates and imposed a significant burden on persons who were not selected by the nominating committee. The court of appeals declined to order petitioner to conduct a second rerun of the 1982 election, concluding that it was sufficient that the corrected nominating procedures would apply to all subsequent elections. Pet. App. A3, A40-A48.

3. Following the court of appeals' decision on the merits, Carter sought to recover attorneys' fees from petitioner. In response to an inquiry by the district court, the Secretary filed a statement acknowledging that Carter's counsel had provided material assistance in the prosecution of the action. The Secretary explained that Carter's counsel had aided his preparation, investigation, and litigation of the action by (1) providing nonduplicative arguments demonstrating that petitioner was subject to the LMRDA; (2) providing material to show that Carter had exhausted her internal union remedies; (3) serving as a ready reference for information; and (4) agreeing to divide the discussion of the issues in the oral argument before the court of appeals so that the Secretary could focus on the nominating procedure issue. Pet. App. A4, A14-A15.

The district court concluded that attorneys' fees generally may be awarded to an intervenor in an action under Title IV. It stated that such fee awards should be designed "to assure vigorous attention to the initiation of complaints, but not to conflict with the policy underlying limited intervention. Fees should be allowed only for a small fraction of the time spent once the [S]ecretary has taken over" (Pet. App. A15). The court disallowed, as duplicative of the Secretary's efforts, half of the time expended by Carter's counsel in connection with the Secretary's district court action and all of the time spent by Carter's counsel on the appeal of the case on the merits (*id.* at A4, A15-A16). The court also denied fees for the time expended in preparing the fee application itself (*id.* at A15).

4. The court of appeals affirmed the district court's order in part and reversed in part by a divided vote (Pet. App. A1-A12, A16). The court held that a fee award to an intervenor in a Title IV election challenge is permissible under the judicially-created "common benefit" rule, which "permits a court to compensate a successful plaintiff where his efforts have resulted in a substantial benefit to the members of an identifiable class of * * * beneficiaries" (*id.* at A5).

The court of appeals observed that in *Hall* v. *Cole*, 412 U.S. 1 (1973), this Court held that attorneys' fees may be awarded under a common benefit theory "to individual union members who bring suit to enforce the 'Bill of Rights' guarantees of Title I of the LMDRA" (Pet. App. A5). It concluded that the logic of *Hall*—that "a successful Title I plaintiff, though primarily seeking to vindicate his own interests, also benefits his fellow union members by promoting the

free speech rights guaranteed by Title I" (*ibid.*)—applies to the actions of intervenors under Title IV. The court recognized that, unlike Title I, which authorizes private enforcement actions by union members, Title IV endows the Secretary with exclusive authority to institute lawsuits challenging union elections, and permits the union member only to intervene in support of the Secretary's complaint. It held that this limitation upon the union member's role "does not mean that courts may not recognize the contribution of individual union members and reimburse them for their expenses" (*id.* at A6).

The court concluded that a fee award is consistent with the Title IV enforcement scheme because of the individual union member's "pivotal role" during the initial stages of Title IV enforcement (Pet. App. A7). Since the Secretary's authority to litigate Title IV election challenges is dependent upon the initial efforts of an individual union member, "the intervenor usually confers a substantial benefit on the union membership by identifying, investigating and presenting for the Secretary's ultimate prosecution, evidence of union violations" (*id.* at A8). The court noted that "the individual union member may not be able to get the necessary assistance of counsel if attorney's fees are unavailable" (*id.* at A7).

The court further found that while the role of an intervenor is more limited after the Secretary institutes a lawsuit, this "does not necessitate the conclusion, as a matter of law, that the [union] member can render no further benefit once the Secretary has assumed control of the litigation" (Pet. App. A7-A8 n.4). Thus, "[t]he intervenor may obtain information which might be difficult for the Secretary to find; and * * * may offer significant contributions to the court's understanding of the case" (*ibid.*).

The court rejected petitioner's argument that Title IV established a comprehensive remedial scheme that bars recovery of attorneys' fees by an intervenor. It noted that this Court upheld the award of attorneys' fees in *Hall* v. *Cole*, *supra*, and found that the statutory scheme set forth in Title IV was no more comprehensively detailed than the provisions of Title I of the LMRDA at issue in *Hall*. Pet. App. A9-A10. It also found that Congress did not intend to preclude awards of attorneys' fees in actions under Title IV, observing that "Congress created a significant role for the individual union member in Title IV's enforcement scheme" and that " 'legislatures do not ordinarily create roles—strong roles—and then deny their existence by refusing to recognize the existence of the means to fulfill them effectively.' " *Id.* at A10 (quoting *Brennan* v. *United Steelworkers (District 15) (District 31)*, 554 F.2d 586, 599 (3d Cir. 1977), cert. denied, 435 U.S. 977 (1978)).

Finally, the court concluded that permitting fee awards in this context would not result in burdensome litigation: "the additional burden to the union in responding to the petition [for fees] is minimal" because "[t]he court and the parties are fully familiar with the contribution, if any, made by intervenor's counsel" (Pet. App. A11). The court also found that the availability of fees would not disrupt the enforcement of Title IV; instead, "the award of attorney's fees where intervenors have made a real contribution will enable intervenors to obtain the necessary legal assistance without threatening the Secretary's predominant role in the enforcement scheme" (*ibid.*).

Turning to the particular facts of this case, the court of appeals approved the district court's award

of fees to Carter "predominantly for counsel's work done preliminary to, and not duplicative of, the Secretary's representation," concluding that "such [a] limitation [of the fee award] encourages proper attention to the initiation of complaints without conflicting with the policy of limited intervention" (Pet. App. A11). However, the court of appeals directed the district court to include an award of fees for the time spent preparing the fee petition (*id.* at A11-A12).[1]

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or another court of appeals. Review by this Court therefore is not warranted.

1. In *Alyeska Pipeline Service Co.* v. *Wilderness Society*, 421 U.S. 240 (1975), this Court reaffirmed the "American Rule" regarding awards of attorneys' fees—that "the prevailing litigant is ordinarily not entitled to collect a reasonable attorneys' fee from the loser" (421 U.S. at 247). The Court recognized, however, that courts have inherent equitable authority to award attorneys' fees to a plaintiff who obtains a benefit for a class of similarly situated individuals (*id.* at 257-258). Underlying this "common benefit" rule is the equitable principle that "[t]o allow * * * others to obtain full benefit from the plaintiff's efforts without contributing equally to the litigation expenses would be to enrich the others unjustly at the plain-

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[1] Judge Winter dissented on the ground that he "agree[d] with the views expressed by Justice White in his dissent from the denial of certiorari in *United Steelworkers* v. *Sadlowski*, 435 U.S. 977 (1978)" (Pet. App. A16).

tiff's expense" (*Mills* v. *Electric Auto-Lite Co.*, 396 U.S. 375, 392 (1970)).

In *Hall* v. *Cole*, 412 U.S. 1 (1973), the Court applied the common benefit rule in the context of an action under Title I of the LMRDA, which sets forth a "Bill of Rights" for members of labor organizations (see 29 U.S.C. 411-415). The Court observed that "[w]hen a union member is disciplined for the exercise of any of the rights protected by Title I, the rights of all members of the union are threatened. And, by vindicating his own right, the successful litigant dispels the 'chill' cast upon the rights of others" (412 U.S. at 8). Thus, "there can be no doubt that, by vindicating his own right of free speech * * *, [the plaintiff] necessarily rendered a substantial service to his union as an institution and to all of its members" (*ibid.*). An award of attorneys' fees therefore was found to be appropriate under the common benefit rule.

Every court of appeals that has considered the question has concluded that the common benefit rule also justifies an award of fees to a union member who has complained to the Secretary of an alleged violation of Title IV of the LMRDA and subsequently has intervened in the Secretary's enforcement action. See Pet. App. A5-A11; *Marshall* v. *United Steelworkers (District 15) (District 31)*, 666 F.2d 845, 848 (3d Cir. 1981), cert. denied, 459 U.S. 823 (1982) (*Steelworkers II*); *Brennan* v. *United Steelworkers (District 15) (District 31)*, 554 F.2d 586, 591-608 (3d Cir. 1977), cert. denied, 435 U.S. 977 (1978) (*Steelworkers I*); *Rollison* v. *Hotel Employees, Local 879*, 677 F.2d 741, 747-748 (9th Cir. 1982); *Donovan* v. *Local 70, International Brotherhood of Teamsters*, 661 F.2d 1199, 1203 (9th Cir. 1981); *Usery* v. *Local*

639, International Brotherhood of Teamsters, 543 F.2d 369, 381-389 (D.C. Cir. 1976), cert. denied, 429 U.S. 1123 (1977).

These courts agree that an individual union member who invokes the Secretary's investigative and enforcement authority and assists the Secretary in successfully challenging an unlawful union election confers a benefit on all of the members of the union. Indeed, the intervenor's actions are critical to the vindication of the Title IV rights of all union members because the Secretary cannot take any enforcement action unless an individual member of the union exhausts the internal union remedies and files a complaint with the Secretary (29 U.S.C. 482). The intervenor's actions prior to the commencement of an enforcement action by the Secretary therefore plainly confer a common benefit; his expenses accordingly should be reimbursed under the common benefit rule. Pet. App. A6-A8; *Steelworkers I*, 554 F.2d at 605-606; *Local 639, Teamsters*, 543 F.2d at 381-382.[2]

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[2] Since the exhaustion of internal union remedies is a prerequisite for an enforcement action by the Secretary under Title IV, the need for competent counsel is particularly acute at that initial stage. The union member must identify violations, formulate a bill of particulars, exhaust internal union procedures, and draft a complaint for presentation to the Secretary. While Title IV may contemplate that an uncounseled union member's complaint is sufficient to trigger the Secretary's broad investigative powers, it cannot be doubted that the filing of a well-crafted and well-documented complaint furthers the purposes of Title IV and ensures that the Secretary will be able to investigate all issues relevant to the legality of the particular union's elections. Pet. App. A7-A8; *Steelworkers II*, 666 F.2d at 851-852; *Steelworkers I*, 554 F.2d at 594; *Local 639, Teamsters*, 543 F.2d at 384-385.

Moreover, as both the courts of appeals and the Secretary have recognized, intervenors' counsel frequently provide unique and valuable information and assistance during the later stages of a Title IV enforcement action. "Not only is the intervenor often in a position to obtain information which might * * * be difficult for the agency to marshall or preserve, but his perspective and the intensity of his interest allow him to contribute to the court's total understanding." *Steeelworkers I*, 554 F.2d at 595 (footnote omitted); see also Pet. App. A7-A8 & n.4; *Trbovich* v. *United Mine Workers*, 404 U.S. at 537 n.8 (suggesting that Title IV intervenors may play a role distinct from that of the Secretary in assisting the courts in fashioning suitable remedial orders); *Local 639, Teamsters*, 543 F.2d at 384.

2. Petitioner contends (Pet. 9) that Title IV establishes a comprehensive enforcement scheme that bars courts from exercising their traditional equitable power to award attorneys' fees under the common benefit rule. This Court has made clear, however, that congressional intent to bar courts from exercising this equitable authority will not be inferred unless the statutory remedies are " 'meticulously detailed' " so as to " 'mark the boundaries of the power to award monetary relief' " (*Hall* v. *Cole*, 412 U.S. at 9-10 (citation omitted)), or the legislative history reveals a " 'definitive and absolute setting of the Congressional face against the giving of such incidental [equitable] relief' " (*id.* at 12 (citation omitted)). Neither of these circumstances is present here.[3]

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[3] Contrary to petitioner's assertion (Pet. 8-9), congressional silence, even in conjunction with the presence of express pro-

This Court already has recognized that Title IV is not so "meticulously detailed" as to allow an inference that Congress limited the courts' equitable power to supplement statutory remedies. Thus, the Court has filled interstices in the Title IV enforcement scheme by permitting a union member to intervene in the enforcement action commenced by the Secretary (*Trbovich* v. *United Mine Workers*, *supra*), and by requiring the Secretary to provide a union member with a statement of reasons when the Secretary decides not to pursue the union member's complaint (*Dunlop* v. *Bachowski*, 421 U.S. 560 (1975)). Moreover, by giving union members the critical role of initiating the enforcement process, the statute reinforces the conclusion that Congress did not definitively and absolutely set its face against awarding attorneys' fees for the important work performed by the complaining union member's attorney. See Pet. App. A9-A10, A11; *Steelworkers I*, 554 F.2d at 594-595.[4]

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visions for the award of attorneys' fees in other parts of a statute, does not conclusively demonstrate an intent to preclude equitable relief. *Hall* v. *Cole*, 412 U.S. at 10-11; *Mills* v. *Electric Auto-Lite Co.*, 396 U.S. at 390-391. For example, in *Hall* v. *Cole*, 412 U.S. at 8, 13-14, the Court held that, although Title I of the LMRDA is silent with respect to awards of attorneys' fees and fee awards expressly are authorized in other parts of that statute, courts may exercise their equitable power to award such relief to private litigants.

[4] This Court's analysis in *Trbovich* refutes petitioner's argument (Pet. 8) that, by rejecting a bill that would have allowed suits by individual union members and specifically authorized attorneys' fees, Congress evinced an intent to preclude application of the "common benefit" theory to Title IV cases. As the Court explained (404 U.S. at 536), Congress's rejection of union member suits was "intended to prevent members

3. Quoting the dissent from the denial of certiorari in *United Steelworkers* v. *Sadlowski*, 435 U.S. 977, 980 (1978), petitioner contends (Pet. 7) that awarding attorneys' fees to Title IV intervenors " 'threatens seriously to obstruct the administration of the LMRDA.' " The dissenters in *United Steelworkers* found it significant that the Secretary, addressing the attorneys' fee question for the first time, had

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from pressing claims not thought meritorious by the Secretary, and from litigating in forums or at times different from those chosen by the Secretary." That decision cannot be viewed as a rejection of the common benefit rule because Congress "at no time considered the possibility that union members might assist the Secretary rather than displace him" (*ibid.*).

Petitioner also is incorrect in asserting (Pet. 7) that the policies underlying this Court's decision in *Trbovich* preclude an award of attorneys' fees. The Court explained in *Trbovich*, 404 U.S. at 535-536, that Congress endowed the Secretary with sole authority to institute an enforcement action under Title IV in order to permit the screening of frivolous complaints and the consolidation of meritorious claims. Since fees would not be available unless the Secretary brought suit and the intervenor's challenge to an election ultimately was upheld, allowing recovery of fees obviously will not subject the union to "claims not thought meritorious by the Secretary" (*id.* at 536) or force the union to "litigat[e] in forums or at times different from those chosen by the Secretary" (*ibid.*). Moreover, as the court below concluded (Pet. App. A11), an intervenor's application for attorneys' fees does not present a threat of burdensome multiple litigation because "[t]he court and the parties are fully familiar with the contribution, if any, made by intervenor's counsel"; instead, "the additional burden to the union in responding to the petition is minimal." Any small burden imposed by the litigation associated with an attorneys' fee application is substantially outweighed by the important contributions of intervenors and their attorneys to the promotion of the rights guaranteed by Title IV.

stated in his submission in that case that fee awards might impede the effective enforcement of Title IV (435 U.S. at 978). The Secretary filed a memorandum urging this Court to review the Third Circuit's decision in *United Steelworkers* because he believed that attorneys' fee awards would discourage unions from settling Title IV suits and would encourage excessive intervention in Title IV actions. Memo of Secy. of Labor at 4-5, *United Steelworkers* v. *Sadlowski, supra.*

The concerns that were the basis for the Secretary's submission in 1978 have not been realized. Thus, in a memorandum filed four years later opposing a petition for certiorari presenting the same question concerning the propriety of fee awards to Title IV intervenors, the Secretary explained that there simply had not been any adverse effect on Title IV enforcement as a result of the courts of appeals' decisions allowing recovery of attorneys' fees by intervenors. Memo in Opp. at 3-4, *United Steelworkers* v. *Sadlowski*, cert. denied, 459 U.S. 823 (1982). The Secretary reaffirms that conclusion today on the basis of four additional years of experience regarding the effect of attorneys' fee awards upon the enforcement of Title IV.[5] In view of the unanimity among the

[5] The Secretary in 1982 limited his comments to the propriety of awards of attorneys' fees for work performed during the period before the individual union member's complaint is filed with the Secretary. Memo in Opp. at 4 & n.1, *United Steelworkers* v. *Sadlowski*, cert. denied, 459 U.S. 823 (1982). The Secretary now informs us, based on his additional experience regarding the effect of attorneys' fee awards, that carefully limited fees for services of counsel rendered during later stages of the proceeding will not impair the enforcement of Title IV. Such fees should, of course, be awarded only for services that materially assist and do not substantially dupli-

courts of appeals regarding the permissibility of such fee awards, and the absence of any adverse effect upon the enforcement of Title IV, review by this Court is not warranted.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted.

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AUGUST 1986

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cate the Secretary's efforts; that standard was applied by the district court and the court of appeals in this case (Pet. App. A11, A15-A16).

☆ U. S. GOVERNMENT PRINTING OFFICE: 1986 491507 20304